

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #5	CCRB Case #: 202005028	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 3:36 PM, Friday, 05/29/2020 9:30 PM	Location of Incident: 80 Centre Street; One Police Plaza	Precinct: 05	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 07/15/2020 12:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/15/2020 12:55 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Thomas Manning	01789	930644	MTS PCT
2. POM Aidan Fahey	07023	965077	MTS PCT
3. POM Yan Poon	15400	957049	006 PCT
4. SGT Darren King	01199	927032	QNS CT
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DI Robert Ohare	00000	916960	006 PCT
2. POM Victor Lara	25333	930533	MTS PCT
3. POM James Mcnamee	14305	961939	MTS PCT
4. POM Anthony Smith	23039	953418	006 PCT
5. POM Christophe Cannizzaro	18261	936294	013 PCT
6. LSA Daniel Gallagher	00000	922389	LEG BUR
7. POM Neville Dastur	00553	943132	010 PCT
8. POM Vansroy Laird	21737	959745	017 PCT
9. SGT Kara Darcey	05503	952638	006 PCT
10. SGT Edward Faini	00103	928266	013 PCT
11. INS Brian McGinn	00000	910284	P S B
12. POM Robert Rufrano	16389	961209	013 PCT
13. SGT Jaline Bernier	05051	938061	PBMS
14. POM Richard Quilty	20740	959429	SRG 4
15. DI Andrew Hillery	00000	925457	SRG 1
16. DT3 Adam Rokos	1900	935640	T.A.R.U
17. POM William Blum	12545	957390	013 PCT
18. POM Thomas Knudsen	29305	952942	013 PCT
19. AC Stephen Hughes	00000	874365	PBMS
20. POM John McCormick	05616	956905	013 DET
21. POM Nicholas Clemente	13250	960375	013 DET
22. POM Mahmoud Khaled	23983	963091	013 PCT
23. POF CheeYing Yong	17581	968198	MTN PCT
24. POM Matthew Robayo	19758	959138	SRG 1

<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
25. POF Krystina Poloni	23534	957967	SRG 1

  

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A.SGT Thomas Manning	Force: At 80 Centre Street in Manhattan, Sergeant Thomas Manning used physical force against § 87(2)(b)	
B.POM Aidan Fahey	Force: At 80 Centre Street in Manhattan, Police Officer Aidan Fahey used physical force against § 87(2)(b)	
C.POM Yan Poon	Force: At 80 Centre Street in Manhattan, Police Officer Yan Poon used physical force against § 87(2)(b)	
D. An officer	Force: At 80 Centre Street in Manhattan, an officer used physical force against § 87(2)(b)	
E.SGT Thomas Manning	Force: At 80 Centre Street in Manhattan, Sergeant Thomas Manning used physical force against § 87(2)(b)	
F.SGT Darren King	Abuse: At One Police Plaza in Manhattan, Sergeant Darren King did not obtain medical treatment for § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 14, 2020, § 87(2)(b) filed this complaint over the phone with the CCRB.

On May 29, 2020, § 87(2)(b) attended a Black Lives Matter protest that began in Foley Square in Manhattan. At approximately 3:30 p.m., in front of 80 Centre Street, Sergeant Thomas Manning and Police Officer Aiden Fahey, then assigned to the 14<sup>th</sup> (MTS) Precinct, took § 87(2)(b) to the ground (**Allegations A-B: Force**, § 87(2)(g)). Sgt. Manning, PO Fahey, and additional unknown officers attempted to handcuff § 87(2)(b). Police Officer Yan Poon, of the 6<sup>th</sup> Precinct, allegedly forcefully pulled § 87(2)(b)'s left finger backwards (**Allegation C: Force**, § 87(2)(g)). An unidentified officer allegedly pulled § 87(2)(b)'s left finger (**Allegation D: Force**, § 87(2)(g)). Sgt. Manning allegedly repeatedly hit the back of § 87(2)(b)'s neck with his forearm, causing his head to hit the ground (**Allegation E: Force**, § 87(2)(g)). § 87(2)(b) was transported to One Police Plaza for processing, where Sergeant Darren King, of Queens Court Section, allegedly refused to obtain medical treatment for him (**Allegation F: Abuse of Authority, miscellaneous** — § 87(2)(g), § 87(4-b)).

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b)

The investigation obtained BWC footage (relevant footage at BR 03-08), handheld TARU footage (relevant footage at BR 09-10), surveillance footage from the Manhattan DA's office and NYS Supreme Court (BR 11-12), and a cellphone video posted to YouTube (BR 13), all of which are summarized at (BR 14). All references to video evidence below refer to the time-stamp in the video player, and not to any on-screen clock embedded in the footage itself.

Sgt. Manning has since been reassigned to the 113<sup>th</sup> Precinct. Sgt. King has since retired from the NYPD. This investigation was delayed by the COVID-19 global pandemic and delays in scheduling officers for remote interviews.

### Findings and Recommendations

**Allegation (A) Force: At 80 Centre Street in Manhattan, Sergeant Thomas Manning used physical force against § 87(2)(b)**

**Allegation (B) Force: At 80 Centre Street in Manhattan, Police Officer Aidan Fahey used physical force against § 87(2)(b)**

It is undisputed that Sgt. Manning and PO Fahey forcibly took § 87(2)(b) to the ground. It is also undisputed that § 87(2)(b) was in the middle of the street when the officers approached him.

§ 87(2)(b) testified (BR 15-16) that as he marched northbound on Centre Street, officers suddenly began pushing protestors and tried to corral them in a certain direction. § 87(2)(b) was walking in the middle of the street and was not doing anything aside from walking and chanting with the other protestors. A white-shirted officer then said, "Take 'em all." Officers descended toward the large crowd and an officer, whom § 87(2)(b) could not see, tackled him from behind. § 87(2)(b) fell onto the ground, face down, and the officer fell on top of him. Prior to that point, officers had not issued any commands to § 87(2)(b). § 87(2)(b) did not strike an officer. § 87(2)(b) did not describe any physical injuries sustained from the takedown.

In the video posted to YouTube (BR 13, at 05:13), Deputy Inspector Robert O'Hare of the 6<sup>th</sup> Precinct speaks with Sgt. Manning and then points at § 87(2)(b) who is standing a few feet away.

No conversations or statements are audible. Sgt. Manning reaches for § 87(2)(b)'s left shoulder and § 87(2)(b) pushes away Sgt. Manning's arm. At 05:18, § 87(2)(b) raises his right arm and swings it downward, hitting Sgt. Manning's wrists. Sgt. Manning and PO Fahey struggle to grab and restrain § 87(2)(b) as he backs away from them. Two different civilians then swing their arms toward Sgt. Manning and officers, and the video pans away as officers attempted to apprehend one of those individuals (identified as Michael § 87(2)(b)). When the camera pans back toward § 87(2)(b) he is on the ground, and Sgt. Manning, PO Fahey, and a few other officers are attempting to handcuff him. Neither Sgt. Manning nor PO Fahey recorded the incident with their BWCs. The handheld TARU footage (BR 09, at 00:02) and other officers' BWC footage (BR 54, at 00:05) also depict this initial interaction, but video footage does not clearly depict the takedown or § 87(2)(b)'s arrest. Video footage does not show the initial interaction between § 87(2)(b) and Sgt. Manning.

Sgt. Manning testified (BR 17) that as he walked on Centre Street, § 87(2)(b) walked past him and intentionally shoulder bumped him, which constituted harassment. DI O'Hare told Sgt. Manning to grab § 87(2)(b). Prior to that point, protestors had been marching in the street and Sgt. Manning ordered them to move onto the sidewalk, but Sgt. Manning was not specifically aware of § 87(2)(b) and had not directly issued him any instructions. As Sgt. Manning attempted to grab § 87(2)(b)'s shoulder, a struggle ensued and § 87(2)(b) threw two "hook punches" toward Sgt. Manning, one of which hit the left side of his head. Sgt. Manning and PO Fahey grabbed § 87(2)(b)'s arms and attempted to take him down to the ground. Another individual approached and punched Sgt. Manning's face two or three times. Sgt. Manning, PO Fahey, and § 87(2)(b) then fell to the ground. The fall was caused by a combination of Sgt. Manning and PO Fahey attempting to take § 87(2)(b) down and because of the individual who punched Sgt. Manning. § 87(2)(b) fell chest-down onto the ground, and Sgt. Manning and PO Fahey fell on either side of him.

PO Fahey's testimony (BR 18) was generally consistent with Sgt. Manning's. PO Fahey recounted that Sgt. Manning instructed him to apprehend § 87(2)(b) and he did not know at the time why § 87(2)(b) was being arrested. As PO Fahey and Sgt. Manning struggled to grab § 87(2)(b)'s arms, momentum brought § 87(2)(b)'s body forward and he fell face down on the ground.

PO Poon and PO James McNamee of the 14<sup>th</sup> (MTS) Precinct testified (BR 19-21) that Sgt. Manning issued instructions to § 87(2)(b) – to either get out of the street or to continue marching because he had stopped walking – and that § 87(2)(b) swung at him. PO Poon recounted that he then went to apprehend § 87(2)(b) and did not see what happened with § 87(2)(b). PO McNamee recounted that Sgt. Manning and other officers then took § 87(2)(b) to the ground. DI O'Hare testified (BR 22) that he saw two protestors assault Sgt. Manning. One individual struck Sgt. Manning's back and shoulder area and the other individual reached over the crowd and punched the top of Sgt. Manning's head. DI O'Hare did not specifically recall § 87(2)(b). DI O'Hare did not issue any commands for officers to place either individual under arrest.

All other officers interviewed were unable to account for the circumstances that led to § 87(2)(b)'s arrest, aside from generally recounting that some arrests commenced because protestors were walking in the street and were not compliant in moving to the sidewalk.

TRI Reports were not prepared for the use of force against § 87(2)(b) (BR 23). § 87(2)(b)'s arrest report (BR 01) documents that officers used a forcible takedown on a fleeing subject.

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. Patrol Guide Procedure 221-01 (BR 24).

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Force: At 80 Centre Street in Manhattan, Police Officer Yan Poon used physical force against § 87(2)(b)**

**Allegation (D) Force: At 80 Centre Street in Manhattan, an officer used physical force against § 87(2)(b)**

§ 87(2)(b) testified that while he was face-down on the ground, officers began twisting his arms and his arresting officer, PO Poon, took § 87(2)(b)'s left pointer finger between his thumb and pointer finger and forcefully pulled it backwards, toward his wrist. PO Poon's actions caused § 87(2)(b)'s left finger to swell, and he thought that it may have been fractured. § 87(2)(b) did not seek medical treatment. § 87(2)(b) provided a photograph depicting marks and abrasions on his left hand and wrist (BR 25) but did not provide photographs depicting injuries to his left finger.

The YouTube video (BR 13, at 05:44) depicts officers handcuffing § 87(2)(b) while he is on the ground. Sgt. Manning and an unidentified male officer kneel to the left of § 87(2)(b) while PO Fahey and an unidentified female officer kneel to the right of § 87(2)(b). The footage does not show any officers pulling § 87(2)(b)'s finger backwards, but it does not provide a comprehensive view of § 87(2)(b)'s arrest and § 87(2)(b)'s hands are not visible throughout most of the footage. PO Poon's BWC footage (BR 04, at 00:05) shows that PO Poon was present when officers initially approached § 87(2)(b) but that he went to apprehend § 87(2)(b) after he attempted to strike Sgt. Manning. PO Poon did not assist with handcuffing § 87(2)(b).

Sgt. Manning testified that to his recollection, neither he nor any other officer pulled § 87(2)(b)'s left finger backwards. PO Fahey denied pulling § 87(2)(b)'s left finger backwards. PO Fahey did not know if Sgt. Manning pulled § 87(2)(b)'s finger backwards and he did not see any officer pull § 87(2)(b)'s finger backwards. Neither Sgt. Manning nor PO Fahey were able to identify any other officers who assisted them with handcuffing § 87(2)(b).

In addition to DI O'Hare, PO Poon, and PO McNamee, the following officers were interviewed, due to their presence or involvement in the multiple arrests effected during this protest: Assistant Chief Stephen Hughes (assigned to PBMS), Police Officer Anthony Smith and Sergeant Kara Darcey (both of the 6<sup>th</sup> Precinct), Sergeant Edward Faini, Police Officer Christopher Cannizzaro, and Police Officer William Blum (all of the 13<sup>th</sup> Precinct), Police Officer Vansroy Laird (of the 17<sup>th</sup> Precinct), Police Officer Neville Dastur (of the 10<sup>th</sup> Precinct), and Police Officer Victor Lara (both of the 14<sup>th</sup> Precinct) (BR 26-34). They each testified that they did not assist in handcuffing § 87(2)(b) and that they did not see an officer pull § 87(2)(b)'s or § 87(2)(b)'s finger backwards.

Given limited video footage, detail rosters that did not include all officers assigned to the protest detail (BR 35), and absent a TRI or any additional relevant documentation (BR 22), the investigation was unable to identify the other officers who handcuffed § 87(2)(b).

Based upon the BWC footage, the investigation determined that PO Poon did not assist with handcuffing § 87(2)(b) and thus that § 87(2)(b) incorrectly identified him as the officer who allegedly forcefully pulled his finger. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Force: At 80 Centre Street in Manhattan, Sergeant Thomas Manning used physical force against § 87(2)(b)**

§ 87(2)(b) testified that during his arrest, his body twisted and turned involuntarily as a reaction to the officers who moved his body and finger in uncomfortable positions. As § 87(2)(b) tried lifting his head to tell PO Poon to stop bending his finger, another officer repeatedly hit the back of § 87(2)(b)'s neck with his forearm, which caused § 87(2)(b)'s head to hit the ground about three times. This did not restrict § 87(2)(b)'s breathing. He sustained scrapes, which were bleeding, on the right side of his forehead. § 87(2)(b) could only describe the officer as a male who was dressed in a dark blue uniform. § 87(2)(b) did not seek medical treatment or provide photographs of these injuries. § 87(2)(b)'s arrest photograph (BR 36) does not appear to depict any lacerations.

In the video posted to YouTube (BR 13, at 06:26), as § 87(2)(b) is on the ground and officers are attempting to handcuff him, he moves his body around. Sgt. Manning then presses his left forearm and elbow against the side of § 87(2)(b)'s head, appearing to hold his head against the ground. The camera pans away and when it pans back, at 06:34, Sgt. Manning is holding § 87(2)(b)'s head against the ground with his open hand. At 06:36, § 87(2)(b) lifts his head upward slightly and Sgt. Manning places his hand against what appears to be the back of § 87(2)(b)'s neck and holds him against the ground. § 87(2)(b) yells intermittently throughout this time frame. At no point does Sgt. Manning strike his forearm against § 87(2)(b)'s neck or head. As noted above, the video does not provide a comprehensive view of § 87(2)(b)'s arrest. BWC footage (BR 08, at 11:30) does not depict § 87(2)(b) with any abrasions to his forehead.

Sgt. Manning testified that while on the ground, there was a struggle as he and PO Fahey attempted to handcuff § 87(2)(b). § 87(2)(b) tensed his arms and did not willingly put his arms behind his back. Approximately one or two officers assisted him and PO Fahey in getting § 87(2)(b)'s arms behind his back. To Sgt. Manning's recollection, neither he nor any officer made physical contact with the back of § 87(2)(b)'s neck. Sgt. Manning did not see § 87(2)(b)'s head strike the ground. After PO Fahey handcuffed § 87(2)(b), Sgt. Manning did not see any physical injuries sustained by § 87(2)(b).

PO Fahey's testimony was generally consistent with Sgt. Manning's. He recounted that § 87(2)(b) resisted arrest by keeping at least one hand underneath his chest, so that officers were unable to handcuff him. PO Fahey did not know if any officers hit § 87(2)(b)'s neck, causing his head to repeatedly hit the ground.

As noted above, all other officers interviewed testified that they did not assist in handcuffing § 87(2)(b). They each denied or did not recall seeing any officer strike § 87(2)(b)'s neck or seeing § 87(2)(b)'s head repeatedly hit the ground.

§ 87(2)(b)'s description of an officer repeatedly striking him after he lifted his head, which caused his head to hit the ground, appears to directly correspond with the video footage – except that when § 87(2)(b) lifts his head, Sgt. Manning does not strike him in the manner alleged. Rather, Sgt.

Manning places his hand on § 87(2)(b)'s head and holds his head against the ground as he resists arrest. Additionally, § 87(2)(b)'s allegation that Sgt. Manning's actions caused abrasions to his forehead – which would be more consistent with his head striking the ground as opposed to merely making contact with the ground – is not supported by the evidence. As such, the investigation determined by a preponderance of the evidence that Sgt. Manning did not strike § 87(2)(b)'s head into the ground.

§ 87(2)(b), § 87(2)(g)

**Allegation (F) Abuse of Authority: At One Police Plaza in Manhattan, Sergeant Darren King did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) testified that while he was in a holding cell at One Police Plaza, he showed his swollen left hand to four officers, including Sgt. King, and said that he needed to go to the hospital. Sgt. King appeared to be in charge and assisted officers with paperwork. § 87(2)(b) asked Sgt. King more than ten times to go to the hospital. He asked the other three officers for medical treatment about three or four times. § 87(2)(b) could only describe them as male officers dressed in uniform. Sgt. King and the other officers repeatedly told § 87(2)(b) that he needed to wait for his arresting officer and did not obtain medical treatment for him. This allegation was pleaded against Sgt. King, as he was a supervisor at the Mass Arrest Processing Center at One Police Plaza.

PO Poon and PO Fahey testified that they fingerprinted and photographed § 87(2)(b) at One Police Plaza. PO Poon recounted that he did not have any conversation with § 87(2)(b) and § 87(2)(b) did not ask him for medical treatment. PO Fahey recounted that § 87(2)(b) did not ask him for medical treatment or make any statements about having physical injuries.

All other officers interviewed were either not present at One Police Plaza or they denied or did not recall hearing § 87(2)(b) ask for medical treatment.

On October 26, 2020, the Department Advocate's Office confirmed that Sgt. King retired (BR 37).

As Sgt. King is no longer a member of the NYPD, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- Sgt. Manning has been a member of the NYPD for 19 years and has been a subject in seven CCRB complaints and 16 allegations, of which one was substantiated:
  - 201810167 involved a substantiated allegation of an entry of premises against Sgt. Manning. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
  - § 87(2)(g)
- PO Fahey has been a member of the NYPD for three years and this is the first CCRB complaint to which he has been a subject.
- PO Poon has been a member of the NYPD for seven years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- Sgt. King was a member of the NYPD for 20 years and was a subject in 19 CCRB complaints and 51 allegations, of which five were substantiated:
  - 200310040 involved a substantiated allegation of a discourteous word against Sgt. King. The Board recommended Charges and the NYPD imposed Instructions.
  - 200410783 involved substantiated allegations of refusal to obtain medical treatment and retaliatory arrest against Sgt. King. The Board recommended Charges and the NYPD imposed Command Discipline A.
  - 201000840 involved substantiated allegations of a stop and frisk against Sgt. King. The Board recommended Charges and the NYPD imposed Command Discipline B.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of December 16, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 39).

• § 87(2)(b)



Squad: 5

Investigator:	<u>Laura Strauss</u>	<u>SI Laura Strauss</u>	<u>11/8/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>November 9, 2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date